

ORIGINAL

ORIGINAL RECEIVED

FILE

APR 22 1991

Before the  
Federal Communications Commission  
Washington, D.C. 20554

Federal Communications Commission  
Office of the Secretary

In re Matter of )

Petitions For Declaratory Ruling )  
Regarding Reversionary and Security )  
Interests )

MMB File No. 910221A  
MMB File No. 870921A

~~DUPLICATE  
FILE~~

To: Roy J. Stewart, Chief  
Mass Media Bureau

Comments

Broadcast Trustee Management, Inc. ("BTMI"), by its attorney, hereby respectfully submits the following comments in the above-referenced proceeding.

Background

1. BTMI is an asset management consulting firm that has represented senior lenders in cases involving over three quarters of a billion dollars in "problem" broadcast loans. As such, it believes that it is in a unique position of being able to offer a "nuts and bolts" perspective to the arguments advanced by Hogan and Hartson in its Petition For Declaratory Ruling filed on February 21, 1991.

Argument

2. Hogan and Hartson, in its Petition, eloquently advances the argument that:

- a) the current "credit crunch" has had a marked adverse impact on the level of service that licensed broadcasters have been in a position to deliver to their respective communities of license; and

- b) that the ability of a borrower to offer a lender a security interest in an FCC license will create a more favorable environment for future broadcast lending.

3. Addressing Hogan and Hartson's second basic premise first, BTMI also can find no impediment to an ownership interest in an FCC license being pledged as collateral in the literal reading of Sections 301, 304, and 309 (h) of the Communications Act of 1934. To wit, Section 301 clearly establishes that the assignment of a license to operate a broadcast facility shall not be "construed to create any right beyond the terms and conditions of the license." Section 304 further defines the limitation on a licensee's "rights" by requiring them to waive any claims "to the use of any particular frequency or of the electromagnetic spectrum." Finally, Section 309 (h) provides that an FCC license does not vest in the licensee any right in the use of the frequencies designated in the license beyond the term thereof.

While BTMI makes no pretense to "second guess" Commission intent, it sees the logic in Hogan and Hartson's theory that subsequent "mis-readings" of these particular Sections of the Communications Act have produced "dicta" tailored specifically to protecting against a creditor being entitled to any automatic reversionary interest in a broadcast license. See Commission Policy Regarding the Advancement of Minority Interest in Broadcasting, 99 FCC 2d 1249 - 1985).

4. Would there be any substantive change in the level of regulatory assurances presently in effect to prevent the unauthorized or reversionary transfer of control of a licensed broadcast facility should the Commission acknowledge a borrower's right to VOLUNTARILY pledge an ownership interest in a station's FCC license as collateral on a commercial loan? BTMI thinks not. From BTMI's perspective, the issue of "control" of a licensed broadcast facility, consistent with regulatory policy, remains clearly defined in the Communications Act and should not be open to debate. Further, any collateralized ownership interest in a license would not circumvent or undermine the FCC's right to examine and rule upon the qualifications of a potential transferee in any application for the outright transfer of control of a station's license. BTMI presumes that this is the primary reason that Hogan and Hartson has not petitioned for a rule change in this regard.

5. If there has been any error in thinking on the part of the FCC in issuing the various dicta aimed at discouraging creditors from exercising any undue control over the operations of a licensed broadcast facility, it has been to presume that creditors (or in this case, senior lenders) have any interest at all in the first place in being involved in a business they know very little about: broadcasting. If experience is any basis at all for assessment, then BTMI would respectfully like to disabuse all concerned parties of

this notion. Generally, a lender will do everything in its power to work with a broadcast borrower in default in an effort to simply recover as high a percentage of their initial investment as possible. Most experienced broadcast lenders realized long ago that "pulling the trigger" on a financially troubled customer is not necessarily the most cost effective way of implementing a successful exit strategy.

6. The concept of asset value is what comes into play first and foremost in dealing with a problem broadcast credit. The majority of lenders are committed to preserving asset value to the fullest extent possible. Seizing control is by far the least effective way to avoid causing asset values (and therefore the value of the collateral held) in a lender's broadcast portfolio to plunge. At the point where this occurs, federal regulations governing the operation of domestically chartered banking institutions (HLT regulations, loan to value ratios, etc.) could conceivably come into play, causing further problems for the lender. Standard liability concerns also contribute to the lending community's natural gravitation toward a measure of self-imposed caution when the inclination arises to entertain the idea of "seizing" control of a defaulting borrower's broadcast operation. The inherent risks (and the potential costs) in pursuing such a strategy are simply too onerous to be justified in most cases.

7. Neither Hogan and Hartson or BTMI is really in a position to suggest that granting the licensee the ability to pledge an ownership interest in its station's license will "loosen up" credit in the near term, providing broadcasters with much needed financing for additional working capital or new acquisitions. The broadcast lending community presently has a bigger concern:

That is, that, in at least one recent case (the now oft-cited Oklahoma City Broadcasting Co., d/b/a KGMC-TV, Debtor), the Western District of Oklahoma Bankruptcy Court ruled that, absent the ability of the bank (NCNB, Texas) to show that it held a security interest in a station's broadcast license (presumed inconsistent with FCC Regulatory Policy), that the station in question had absolutely no "going concern value" at all. In effect, this forced on the lender a reduction of the value of the assets it held in collateral in exchange for extending credit to this particular borrower.

There is clearly some logical concern among present and potential broadcast lenders that this decision could set a dangerous precedent. The fact that this concern could further negatively impact the prospects for increased availability of credit to the broadcast industry should not be ignored in considering the Hogan and Hartson Petition.

8. There is no question that the availability of future funds for acquisition is absolutely necessary for an improvement in the present depressed environment for station trading. Sale prices (and hence the value of collateralized assets held by lenders) will continue to fall without some clear sign from federal regulators (the FCC, the OCC, the FDIC, and Congress) acknowledging and addressing the consequences of industry deregulation and the resulting

economic realities for broadcasting in the 1990's. A favorable reply to the Hogan and Hartson Petition could provide a much needed catalyst for positive change, and a healthier perception on the part of the lending community that broadcasting is a viable investment opportunity.

9. The other basic premise espoused in the Petition is the contention that a lack of credit is causing troubled licensees to reduce the level of service they provide broadcasting in the public interest. It is indisputable that financially strained broadcasters are being forced to consider cost control measures ranging from airing satellite delivered programming on a partial or full time basis to entering into programming and marketing agreements which license once competing operators to provide simulcast programming and time brokering services. This is particularly true in radio. In fact, the FCC has recently issued staff rulings approving of these types of agreements. However there is ample evidence to suggest that these types of arrangements clearly have the potential to reduce or limit the overall amount of "choice" afforded the listeners, and results in a diminution in the amount of locally originated programming devoted to issues important to the broadcaster's community of license, despite any requirements to the contrary. Here again, the option of effectuating the sale of a station to a buyer with the resources to maintain a higher level of service to the community could depend upon conditions in the broadcast

credit market. The FCC could do worse than contributing to the effort to preserve this option for a troubled licensee by potentially improving the availability of credit to the broadcast community. All that would be required of the FCC is a clarification of its position with regard to any regulatory impediments limiting a broadcast borrower's ability to VOLUNTARILY pledge an ownership interest in the station's license.

10. In an open, competitive market, given the option, a borrower could theoretically choose to deal with a lender who does NOT require a collateralized ownership interest in the broadcast license as a pre-requisite to the extension of a line of credit. BTMI is not naive enough to assert that this option will be available to every prospective broadcast borrower at the outset. However, the business of lending money is also subject to the common laws of supply and demand. If the Commission can do its small part to reconsider its position on this important issue, and provide that additional motivation for more lenders to make more credit available to the industry, then conditions are sure to become more favorable for borrowers as competition among lenders increases. Further, increased competition will force lenders to offer more attractive terms in an effort to win prospective borrowers, providing market-generated support for the regulatory restraints against the unauthorized transfer of control that the Commission continues to be so concerned about.

Summation

BTMI fully supports the position delineated in the Petition for a Declaratory Ruling. Specifically, BTMI believes that the ruling requested therein will result in no undermining of the FCC's vested regulatory authority and will represent a reasoned response to present and future market conditions governing the asset values of broadcast properties, and prospective broadcast borrowers' access to credit.

Respectfully submitted,

BTMI

By: 

Paul W. Robinson, Jr.  
President  
BTMI  
1233 20th Street, NW  
Suite 205  
Washington, D.C. 20036

By: 

Stephen C. Simpson  
1233 20th Street, NW  
Suite 205  
Washington, D.C. 20036

Its Attorney